Focus on Legal Reform

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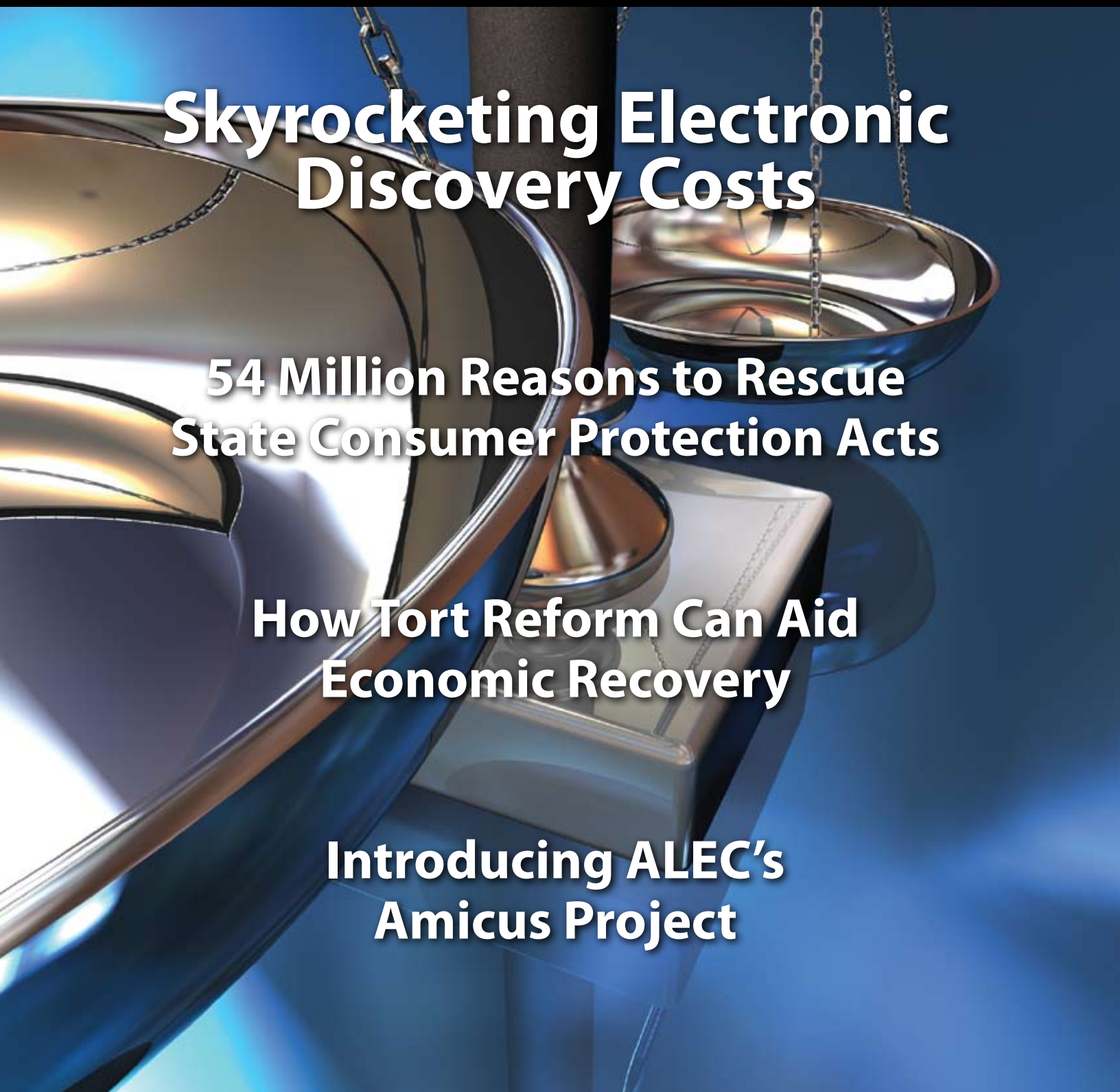
March 2009 A Publication of the American Legislative Exchange Council



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May 1-2, 2009	Spring Task Force Summit ***Deadline to submit Model Legislation is March 17th***	Memphis, TN
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December 2-4, 2009	States & Nation Policy Summit	Washington, D.C.

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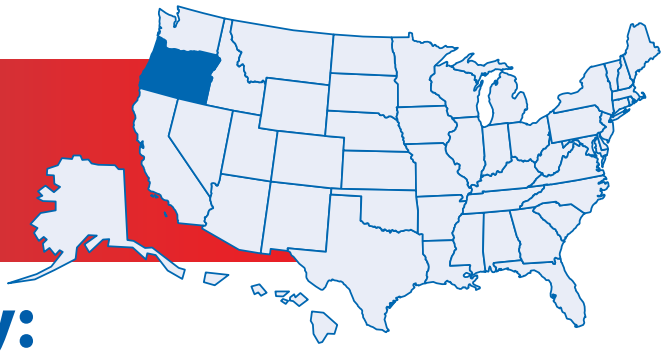
State Spotlight: Model Legislators



It's The People's Money: Oregon Legislators Propose a New State Government Transparency Website

By Jorge Amselle

Everything Oregon taxpayers ever wanted to know about their state taxes and spending could soon be one click away under a measure introduced recently by a bi-partisan group of legislators. Based on ALEC's "Taxpayers Transparency Model Legislation," State Representative Gene Whisnant (ALEC's State Chairman), and ALEC Member Kim Thatcher, joined with Representatives Arnie Roblan, and Jefferson Smith to co-sponsor House Bill 2500 to create a comprehensive, free, searchable website for the state budget. HB 2500 is also known as the Open Books Oregon Project.

"We want the website to be user friendly," said State Representative Arnie Roblan (D-Coos Bay). "It will also include salary categories for state workers, contracted programs, and performance outcomes so we can show the services being provided."

"Complete budget transparency is vital to keeping government accountable to the people and people engaged in their government," said State Representative Jefferson Smith (D-Portland). Currently, 13 states have similar programs. Two years ago, then-Senator Barack Obama spearheaded an Act of Congress to create a website to track federal spending.

"During a recession, working families and small businesses watch how they spend every nickel and dime, they deserve to know where every one of their tax dollars is going as well," said State Representative Kim Thatcher (R-Keizer, Newberg, St. Paul). The current all-funds budget is approximately $50 billion and includes some 50,000 state workers.

"ALEC alumni member, former Rep. Linda Flores was the leader of this effort to draft a 'Taxpayers Transparency' bill in our state. Rep. Thatcher and I picked up the idea and ran with it. Transparency is vitally important because, in the end, there is no such thing as government money, it's only taxpayer money in government hands," said State Representative Gene Whisnant (R-Sunriver).

ALEC Oregon State Chairman Rep. Gene Whisnant (left) and ALEC Member Oregon Rep. Kim Thatcher

"Government transparency and accountability are important at any time, but in this tough economic climate Oregon taxpayers have even more concern about how state government is spending our hard-earned tax dollars," said Steve Buckstein, Cascade Policy Institute Senior Policy Analyst and Founder. "This legislation will go a long way toward assuring Oregonians that their government is spending their money in appropriate ways."

Sandra Fabry, Executive Director of the Center for Fiscal Accountability, is thrilled to see lawmakers in Oregon following the lead of other states. "The fact that this bill is sponsored by legislators from both sides of the political aisle is not surprising, and we're seeing this happen all over the country: Transparency and accountability in government are principles our Founding Fathers held dear, only now with the Internet we have the tools to make them a reality. This is clearly not a left-right issue, it is a right-wrong issue."

Now is the Time:
How Tort Reform Can Aid Economic Recovery

By Andrew Vanderput

Recent case studies suggest that tort reform has the ability to decrease numerous costs and stimulate economic growth. Such evidence has never been so timely. Given what appears to have become the worst recession in decades, states must consider ridding themselves of policies that could frustrate their economic recovery. Likewise, consumers are being financially squeezed and are looking to cut costs. For many states, tort law is one area in which reform would help both revitalize the economy and decrease consumers' financial difficulties. States such as Texas, Ohio, and Mississippi have all enacted tort reform, stimulating job creation and deflating fiscal burdens. Such reforms are more relevant and necessary than ever before.

Background
The financial strain of costly litigation on the U.S. economy is startling. The U.S. Department of Commerce released a study in October of 2008 demonstrating the enormous costs of an uncertain and abused legal system, equaling hundreds of billions of dollars. According to the report, tort costs consume to 1.87 percent of our nation's GDP, or about $7,000 per American family.[1] Considering many European nations face legal costs of less than half of this amount, this places the U.S. at a considerable competitive disadvantage internationally. Inflows of foreign direct investments (FDI) to the United States have decreased due to international business and investor fear of high tort costs. They have allocated an increasing amount of their capital elsewhere. This poses a considerable problem as FDI is an important source of job-creating capital. Foreign-based firms alone employ over five million U.S. workers and indirectly support millions more.[2] Many state tort systems inhibit the potential for economic growth via foreign investment. And these concerns can only apply more heavily to domestic industries.

Reducing Consumer Costs and Creating Jobs
Tort reform has empirically been proven to both reduce consumer costs and help create jobs. The Pacific Research Institute produced a report proving tort reform's capability to decrease various costs, including insurance premiums. The report indicates that the net impact of the tort reforms analyzed in the study was a 47-percent reduction in tort losses and a 16-percent reduction in insurance premiums for consumers.[3] Given this decrease in consumer costs, states should strongly consider tort reform as one policy tool that can lessen its constituents' fiscal pains in the midst of a recession.

States like Mississippi, Texas, and Ohio recognized the detrimental effect of a runaway legal system and enacted strong tort reform measures, to the benefit of the individual state economies and constituents.

Mississippi
Prior to its passage of meaningful legal reform in 2002 and 2004, Mississippi experienced two correlating phenomena: it was the poorest and most litigious state.[4] According to former ALEC Civil Justice Task Force Co-Chair and author of Mississippi's comprehensive legal reform legislation, former Mississippi Senator Charlie Ross, "a virtual mass tort industry" existed within the state. Remarkably, "hundreds of plaintiffs could sue hundreds of defendants in one lawsuit in a state court."[5] The legal environment was so poor that business leaders of prominent companies told Mississippi Governor Haley Barbour they would not locate within the state unless the tort system was corrected.[6] Mississippi was to remain an economic basket case unless something was done.

Not only had Mississippi's toxic legal environment resulted in economic woes, it also put the state's citizens' health at risk. Doctors, who are often the prime victims of an overly-litigious system, were facing extremely high medical malpractice insurance rates. Medical malpractice lawsuits had become so commonplace that premiums increased 25 percent every year, causing doctors to flee the state.[7]

The Mississippi Legislature passed comprehensive tort reform in 2004, capping select non-economic and punitive damages and making a number of other essential alterations within the state's tort system. Not long after

tort reform was passed, businesses began to locate within the state. Federal Express, Toyota, insurance companies, and other businesses, no longer apprehensive about the legal climate within Mississippi, all came to a state that had seemingly been reborn.[8] These companies provided tens of thousands of new jobs and Mississippi's economy began to thrive once again.

The tort reform also had the positive effect of decreasing medical malpractice suits by 90 percent, which reduced malpractice insurance by 30 percent to 45 percent.[9] Consequently, insurance premiums and health care costs decreased for consumers as well.

Ohio

Up in the rustbelt, Ohio also suffered from the effects of an out-of-control tort system. As in Mississippi, doctors were burdened with outrageously high medical malpractice insurance rates, raising 30 percent in 2002 and 2003 and 20 percent in 2004.[10] Jury verdicts were skyrocketing. Despite the legislature's best efforts to meet the ever-growing challenges within the tort system, the state supreme court's rulings continually frustrated these attempts at reform.[11]

Starting in 2002, the state legislators began to make some headway and successfully pushed through a flurry of reforms in subsequent years. Accordingly, medical malpractice claims have fallen dramatically. In 2006, claims fell to 4,006, from 5,051 in 2005.[12] In 2007 these claims fell further to 3,451. A recent report conducted by the Ohio Department of Insurance indicates that after tort reform passed in 2003, average paid claims fell from $556,191 to $213,065, a 60 percent drop.[13] According to the Center for Legal Policy at the Manhattan Institute, the largest insurer in Ohio, the American Physicians Assurance Corporation, cut its rates by 3.6 percent in 2006.[14] An Ohio business journal, *Business First of Columbus*, recently reported that in 2007 insurance rates fell 11 percent and that the most updated information for 2008 indicates a drop of 5 percent.[15] This downward trend is even more remarkable given the fact that these same insurance rates had been jumping between 20 and 30 percent annually in the years before tort reform was passed.

While the drops in claims and rates cannot be attributed solely to tort reform, the legislature's reforms have certainly had a positive impact. According to ALEC member and Ohio Senator Bill Seitz, tort reform's role in the reduction of costs and claims will only become more apparent in the coming years. Regardless, the reforms are already making a strong impact.

Texas

Texas is another excellent example of the benefits associated with tort reform. In 2003 the Texas legislature passed a bill that built upon earlier but insufficient reforms. Much like the states previously mentioned, Texas began to experience a copious amount of positive results.

Former ALEC member and state representative, Joe Nixon, stated that "in just five years after its major lawsuit reform effort, Texas has seen unprecedented growth in the number of physicians, capital investment in hospitals and medical facilities, improvement in healthcare and growth in general business." More specifically, 14,500 new physicians became Texans and $3 billion was invested in new medical infrastructure during these years. In addition, insurance rates for doctors fell. The American Physicians Insurance Exchange saw a $3.5 million reduction in premiums for doctors in 2005 alone. Such savings undoubtedly cut costs for consumers. One study indicated that reform measures helped save Texas approximately $7.630 billion dollars.[16] Well over $2 billion were saved by consumers directly, reducing their fiscal burden.

Now is the Time

Unfortunately, many states find themselves today with tort systems that have taken an economic toll on individual states and on the country as a whole. States with investment-crippling legal systems must reform, particularly as we grapple with the effects of this harsh recession. Such reform will help reinstate states to economic viability today and will set up a prosperous institutional structure for tomorrow.

Andrew Vanderput is Legislative Assistant to the Civil Justice Task Force and to the Natural Resources Task Force at ALEC.

1 Charles Schott, "The U.S. Litigation Environment and Foreign Direct Investment" (Washington: U.S. Department of Commerce, 2008),

2 Ibid.

3 Crain, Crain, McQuillan and Abramyan, "Tort Law Tally: How State Tort Reforms Affect Tort Losses and Tort Insurance Premiums,"

4 Stephen Moore, "Mississippi's Tort Reform Triumph," Wall Street Journal, 10 May 2008. Available from Internet: http://online.wsj.com/article/SB121037876256182167.html?mod=opinion_main_commentaries

5 Charlie Ross, "Winning the Tort War in Mississippi: Keys for Success in other States" (Washington: American Tort Reform Association, 2004),

6 Moore, "Mississippi's Tort Reform Triumph."

7 Ibid.

8 Ibid.

9 Ibid.

10 Ohio Trial Lawyers, Inc. Update, no. 5 (2008): 5.

11 Ibid., 2.

12 Ibid., 7.

13 Matt Burns, "Report: State malpractice claims, insurance rates fall," Columbus Business First, 3 February 2009. Available from Internet: http://columbus.bizjournals.com/columbus/stories/2009/02/02/daily14.html

14 Ohio Trial Lawyers, Inc., 5.

15 Burns, "Report: State malpractice claims, insurance rates fall."

16 "How Tort Reform Works," American Tort Reform Association, 2007. Available from Internet: http://www.atra.org/wrap/files.cgi/7964_howworks.html

Legislators Need a Budget Timeout

By Amber Gunn and Jonathan Williams

Would you ever agree to buy a used car without knowing all of its features, mileage, or total cost? Of course you wouldn't. The possibility of getting a lemon always exists so most people try to minimize the risk of a bad purchase.

Similarly, when legislators consider whether to "buy" the state budget, they need some time to think it over. In states across America, it's not uncommon for public hearings to be held on budgets only a few hours after the bills have been introduced. So you would probably ask, why hold a hearing on a bill that no one has had time to read?

The state budget is one of the most critical of all bills passed by legislators and should not be treated as a rush job. It appropriates billions of dollars and is hundreds of pages long. It shouldn't be the subject of a high-pressure sales pitch, or be voted on while the ink is still wet.

A 72-hour timeout is a sensible waiting period between the budget's public introduction and a public hearing. This would allow legislators and concerned citizens time to ask questions about items that get slipped in at the last minute. It gives legislative staff and trusted advisors time to raise flags about things that don't add up. As an added bonus, it's just enough time for legislators and citizens to rouse themselves if their reading of the budget puts them into a deep sleep.

For the most part, only the budget writers know everything that is in the actual bill. By the time the budget is proposed, legislators have been worked over for months by lobbyists, so it's sensible to have a 'cooling off' period. It's never wise to make a decision when the salesman is right in front of you.

The public also needs time to offer meaningful comments before a public hearing. While the average citizen has no desire to spend hours meticulously combing through the budget, the determined souls who do should get that opportunity.

A budget timeout is a common accountability mechanism that is supported on a bipartisan basis in other states. Twenty-three states have constitutional or statutory provisions that lay out the minimum time the legislature must review the budget before a vote. The time frame ranges anywhere from 24 hours in states such as Texas and West Virginia to 10 days in Rhode Island.

If a bill is important enough to spend our hard-earned tax dollars, isn't it important enough to require the transparency and accountability that a cooling off period provides? In fact, ALEC's Tax and Fiscal Policy Task Force adopted the 72-Hour Budget Review Act (available to ALEC members at www.alec.org) at the 2007 Annual Meeting and follows its legislative progress across the nation.

A budget timeout is fundamentally and practically a good idea. More time for public input can only improve the quality of legislation by promoting informed and rigorous debate. It is also a way to bring much needed sunshine into the legislative process. Legislators need time to learn what they are voting for or against, and the public, media, and watch dog groups also deserve time to review the budget and raise red flags on questionable priorities before hearings or votes are held. This is especially true at a time when solving our state's fiscal problems means tough decisions will have to be made this session.

Now more than ever, a budget timeout is needed. Let's make sure the budget process allows for all the transparency and accountability Washington lawmakers and taxpayers alike deserve. After all, the state budget should never be an impulse buy.

Amber Gunn is Director of the Evergreen Freedom Foundation's Economic Policy Center. She serves as a voting member on the American Legislative Exchange Council's Tax and Fiscal Policy Task Force. Jonathan Williams is the Director of ALEC's Tax and Fiscal Policy Task Force.

54 Million Reasons to Rescue State Consumer Protection Acts

By Amy Kjose

Dry Cleaners Jin and Soo Chung with the pants in question and their attorney, Mr. Chris Manning

On December 18th, the D.C. Court of Appeals denied the appeal of former Judge Roy Pearson's lawsuit demanding $54 million from his local drycleaner for a temporarily misplaced pair of pants. On January 6th, Pearson filed a petition for a rehearing with the D.C. Court of Appeals. On March 3rd, his petition was again denied

Jin and Soo Chung, the owners of Custom Cleaners, were sued by Judge Pearson because of an allegedly misleading "Satisfaction Guaranteed" sign hanging in the window of their shop.

After being hired to alter a pair of Judge Pearson's pants, the Chungs misplaced the pants for a short period of time. Upon recovery, they attempted to give the pants back to Pearson who refused to take them and demanded payment instead. Via lawsuit, Judge Pearson informed the Chungs that his satisfaction would not be guaranteed unless they paid him an exorbitant sum which, though argued down to $54 million, was still exorbitant.

Judge Pearson's outrageous interpretation of the Chung's "Satisfaction Guaranteed" sign is apparent. The Court of Appeals' held, "We agree with the trial court that Pearson's expansive interpretation of 'Satisfaction Guaranteed' is not supported by law or reason."

The denial was certainly good news for the Chung family, but it is difficult to call them the winners. The time, cost, and energy of fighting this case have taken two of their three dry cleaning shops from them. Prior to Judge Pearson's lawsuit, the Chungs had grasped success after 14 years of hard work. And as Pearson's continual appeals suggest, he may attempt to push his case further. The Chungs may yet face more costs and heartache.

Christopher Manning, the attorney representing the Chungs, shared his mixed response to the court's denial of the December 18th appeal with ALEC: "While the Chung family and I are happy with the trial verdict and the denial of Mr. Pearson's appeal, the fact remains that business-killing frivolous litigation similar to this could easily happen again if changes aren't made to our legal system. In particular, the vague and often unfair D.C. Consumer Protection Act, and similar laws in other states, must be amended to not encourage meritless lawsuits like this case."

Mr. Manning is on point in his assessment of the vague D.C. Consumer Protection Act. In the federal equivalent of a Consumer Protection Act (the Federal Trade Commission Act), the Federal Trade Commission has been given the authority to decide when unfair and deceptive trade practices occur. Congress has maintained more than once that no private right of action should exist under the FTC. However, at this time all but one of the 50 states and the District of Columbia allow consumers to bring private rights of action under their consumer protection laws. ALEC has found that when these private rights of action exist, it is in the best interest of the state to include provisions requiring proof of a false statement, an intent to deceive, reliance on the statement, and, of course, actual harm. The D.C. Consumer Protection Act, however, only requires a plaintiff to suggest that any statement made by the defendant had a "tendency to mislead." Mr. Pearson's claim is not quite as farfetched under this ambiguous language.

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The problem does not stop in D.C. Numerous other state-level Consumer Protection Acts are similarly vague.

The American Legislative Exchange Council has developed its *Private Enforcement of Consumer Protection Statutes Act* to safeguard against such troublesome abuse.

State legislators in Kansas, South Carolina, and Oklahoma have introduced bills that would mend their own state consumer protection acts to safeguard against outrageous abuse, like Judge Pearson's of the DC Consumer Protection Act. Discerning legislators in a few other states are looking to take up these well-intended reforms as well.

In Oklahoma, state legislators aiming to reform a number of aspects of the state's legal system have included amendments to the state's consumer protection act in their comprehensive reform. If the legislation is successful, consumers will have had to rely on the practice violating the statute and will have to have experienced "an ascertainable loss of money or property" in order to recover under the statute. While Oklahoma's statute in its current state is not nearly as ambiguous as the extremely problematic D.C. Consumer Protection Act, the passage of these reforms will help clarify the requirements and extent of the statute so as to avoid any unfair lawsuits while continuing to punish any legitimately unfair business claims.

As a part of South Carolina's comprehensive legal reform proposal, the authors have sought to amend the state's consumer protection act by upholding the same proof requirements of any common law legal action. The minor but essential change provides that any person seeking to recover damages in an unfair trade practice claim must prove that the alleged unfair practice caused him to enter into the transaction that resulted in an actual out-of-pocket loss. Without such a progression, consumers could easily file a lawsuit against a business whose unfair practice never impacted the plaintiff. Such unfounded claims have been nicknamed "private attorney general claims." In effect, an individual can aim to recover damages on behalf of all the potential citizens who might or could have been affected by the allegedly unfair practice. This disconnect in the D.C. law allowed Judge Pearson to attempt to claim damages of up to $54 million. If South Carolina is so fortunate as to reform its unfair trade practices act, it will be able to avoid such strangling litigation as the $54 million pants lawsuit.

Legislation in Kansas would articulate that the consumer must experience an actual loss in order to recover under the Consumer Protection Act. Unfortunately, the legislation does not go so far as to limit a consumer's recovery to their out-of-pocket losses. The legislation remains silent as to the types of damages recoverable. While damages beyond out-of-pocket losses can be safely awarded on occasion (in fact, the ALEC model allows for the awarding of additional triple damages for willful violations of the statute), allowing attorneys to concoct any type of recovery (pain and suffering, sorrow, etc.) that could fall under the "damages" category may beget significant abuse. Regardless, the Kansas reform currently under consideration is a step in the right direction.

And while these legislators are trying to amend their consumer protection statutes reasonably, other legislators are attempting to aggrandize the law with ambiguous language. The benefit to personal injury attorneys of aggravating consumer protection statutes is clear. While in most cases, grievances for injuries can be appropriately redressed through the tort system, artful plaintiff attorneys often seek remedy through proof-light consumer protection statutes. The ALEC model does not aim to inhibit consumers from recovering actual damages for legitimate claims, but upholds that such claims should be subject to accepted legal requirements of proof.

In Washington State alone, the legislature is currently presented with at least 34 bills that would extend the application of the already elusive Washington Consumer Protection Act. These various pieces of legislation would subject practices not previously regulated by the consumer protection act to its broad proof requirements. It is no wonder that some plaintiff attorneys would want to deal with the statute rather than the tort system on a number of practice areas. However, whether

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Skyrocketing Electronic Discovery Costs Require New Rules

By Alfred W. Cortese, Jr.

As discovery of information in litigation continues to drive costs ever upward, more claimants are driven out of the judicial system, and the system serves far fewer of the purposes for which it was designed. The technological revolution has had a substantial impact upon discovery in civil litigation as the scope of what is included in the phrase "electronically stored information" (ESI) can be enormous and the protection of privileged and work product information made more difficult.

To taper the woes associated with modern-day discovery, the American Legislative Exchange Council's Civil Justice Task Force is developing model legislation incorporating court rules to govern the discovery of ESI and waiver of privilege in state court litigation.

The Changing Litigation Landscape

The idea that broad pretrial discovery in litigation was the best means of arriving at truth arose in a carbon paper world--when the total universe of most documents was an original and two copies. Not too many years ago, the ability to photocopy documents greatly influenced their availability for discovery and led to production of what had been considered "impossible" volumes of documents. Today the advent of email and cheap storage on hard drives and backup tapes has taken those volumes to previously unimagined levels. Thus, we no longer speak in terms of pages of information. We talk of kilobytes, megabytes, gigabytes, and terabytes. A gigabyte is equivalent to 500,000 typewritten pages. A typical office laptop can store 40 gigabytes (equivalent to 20 million pages) of information. Large corporate mainframe computers store many terabytes of information. A terabyte is equivalent to 500 million typewritten pages.

A company with 80,000 employees worldwide gave testimony before the federal rules advisory committee in 2005 and illustrated the difficulties associated with the discovery of ESI based purely on numbers:

> "We generate 5.2 million emails daily (2.5 million in the U.S.). Our employees have 65,000 desktop computers (26,000 in the U.S.) and 30,000 laptop computers (15,000 in the U.S.). The storage capacity of the desktop and laptop computers we are now issuing to employees is 40 gigabytes each. (One gigabyte equates to 500,000 typewritten pages. Forty gigabytes equates to 20 million typewritten pages.) Our employees use between 15,000 and 20,000 Blackberrys or PDAs (between 7,500 and 10,000 in the U.S.). By the end of 2005, we estimate that our employees will be using 100,000 "thumb drives" (40,000 in the U.S.). We have 7,000 servers (4,000 in the U.S.); 1,000 - 2,000 networks (400 - 600 in the U.S.); 3,750 e-document collaboration rooms (3,000 in the U.S.); and 3,000 databases (2,000 in the U.S.)."

In 2005, the total amount of data stored in the U.S. on the part of this company alone amounted to 500 terabytes, or the equivalent of 250 billion typewritten pages.

More than just gross volume and multiple, disparate locations, electronic information is infamous for its complexity. Finding it, moving it, and understanding it may require a number of different disciplines and a variety of components.

Court rules that once required the review and production of relevant paper documents that, while often voluminous, were limited in scope, now frequently involve an extensive search through many separate computer systems. Electronic media has become the nearly exclusive manner of producing and storing information in the corporate world. Studies have estimated that 99.9997 percent of all information storage was preserved in electronic form and as much as 30 percent of this information will never be converted into paper form. Furthermore, far more information is preserved in electronic format than was previously archived in paper form, for example, in the proliferation of e-mail and text messaging.

For many litigants, the electronic data that accumulates on a daily basis is vast and difficult to manage. Much

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of this data is stored in reasonably accessible sources, which people use in the ordinary course of business, but vast quantities of this data are also preserved in sources that are not reasonably accessible, such as back-up storage media used for disaster recovery. Furthermore, substantial amounts of information consist of files that have been purportedly "deleted," yet may still be recovered (albeit at significant burden and expense). Requiring a litigant to restore and retrieve data at its own expense from back-up tapes, "deleted" files, and other sources that are not readily accessible is having significant negative financial impact and resulting in substantial interference to the day-to-day business activities of many litigants.

When discovery processes were put in place, data of such magnitude and complexity were unfathomable.

The Complexity, Cost, and Burden of E-Discovery
Examples are legion of the enormous direct costs of production of electronically stored information in today's litigation, often running into the millions of dollars in just one case.

According to the University of Denver's "Electronic Discovery: A View from the Front Lines," Verizon has gathered information on the company's internal costs associated with e-discovery: "processing, reviewing, culling and producing 1 GB of data [costs] between $5,000 and $7,000 (assuming precise keyword searches have been employed). If a "midsize" case produces 500 GB of data, this means organizations should expect to spend $2.5 to $3.5 million on the processing, review and production of ESI." This estimate includes attorney time and all outside vendor bills, but does not include the costs to restore and review information on backup media (if necessary). And, such costs are in addition to the burdens on management and personnel involved in responding to broad e-discovery requests.

Computer systems are not only complicated but are designed and operated for business needs that have nothing to do with litigation. The features that make systems efficient for business may make them inefficient for retrieving information for pretrial discovery. Clearly, something must be done to alleviate the burden, expense, and uncertainty of complying with electronic discovery requests. Unfortunately, courts have been slow to acknowledge that litigants should not be penalized for the use of computer technology, as the use of such technology is no longer simply a choice, but a necessity.

Discovery of electronically stored information is unique and raises markedly different issues from conventional discovery of paper records. ESI is characterized by exponentially greater volume than hard-copy documents. Unlike paper, computer information is also dynamic; merely turning a computer on or off can change the information it stores. The routine operation of computer systems may systematically delete or overwrite information. And ESI, unlike words on paper, may be incomprehensible when separated from the system that created it.

Moreover, technology issues are not so apparent that they lend themselves to intuitive thinking by even the best-intentioned representatives of bench or bar. They are not inherently present awaiting counsel or judges to ferret them out. As a result, litigants have been contending with undue costs, loss of data, the belated finding of data, and impossible volumes containing largely irrelevant, redundant, or unimportant information. These are some of the problems that model rules must address.

The electronic information explosion exceeds the efficient processing capabilities of lawyers, litigants, and judges, and requires narrowly focused, "smart" discovery targeted to information that is relevant and material to the claims and defenses and necessary to the disposition of the action. Clear, bright line rules would help discourage unnecessary and costly e-discovery by clearly delineating production responsibilities and properly allocating the costs and burdens of production. Without such guidance, e-discovery threatens the ability of litigants and courts to resolve cases on the merits.

The Federal E- Discovery and Privilege Waiver Rules
The lengthy, in-depth study by the federal rule makers leading to adoption of extensive amendments to the Federal Rules of Civil Procedure that became effective on December 1, 2006, established that the discovery of ESI is vastly more time-consuming, burdensome, and costly than "paper discovery." The rule makers also recognized the inconsistencies in developing

case law on e-discovery, the emergence of disparate local federal court rules, and a growing trend toward the balkanization of rules and practice that created a patchwork of rules and requirements throughout the country. While such inconsistencies are particularly confusing and debilitating to large public and private organizations, the uncertainty, expense, delays, and burdens of such discovery also affect the ability of small organizations and individual litigants to obtain justice.

The federal amendments were the result of many compromises necessitated by their application to all federal cases in courts throughout the country. Therefore, they did not attempt to solve all e-discovery problems and early experience with them shows the need to deal directly with the remaining problems, particularly as they impact the several states.

A new Rule of Evidence, FRE 502, was also developed by the federal rule makers and enacted into law by Congress in 2008. This rule establishes predictable, consistent standards for protection against waiver of the attorney-client privilege and work product immunity in document production and complements the procedural protections of the 2006 e-discovery amendments. It is incorporated into the model rules discussed below.

Model E-Discovery & Privilege Waiver Rules
The five rules suggested here attempt to establish concise, clear, and unambiguous standards that will supply needed guidance to bench and bar in dealing with electronic information and privilege waiver issues arising in discovery. They attempt to deal directly with the core problems in modern discovery and should reduce the ability of some litigants to leverage the cost and volume of that discovery to force settlements. They should also reduce unexpected and unnecessary discovery costs and burdens due to lack of planning, information, and management. Overall, the proposed rules should lead to faster, less expensive, and better collection of data and should help to avoid expensive problems, prevent loss of data and ensure an efficient and sensible preservation, collection, review, and production process.

Rule 1 – Definitions
Definitions need to be updated in order to recognize the need for language specifically applicable to electronically stored information. The definition of "electronically stored information" should be sufficiently broad to cover all types of computer-based information, and sufficiently flexible to encompass future technological changes and development. The definitions of "attorney-client privilege" and "work-product protection" should be drawn from the new Federal Rule of Evidence 502 (g).

Rule 2 – Discovery
The unique issues raised by the difficulties in locating, retrieving, and producing electronically stored information need to be addressed. Under this rule, a responding party should permit discovery of electronically stored information that is relevant, not privileged, and reasonably accessible. Information that is from sources that are reasonably accessible is subject to discovery without intervention of the court, subject to the limitations generally applicable to discovery under the state's existing discovery rules and to the limitations imposed by another subsection of the rule that require the court to ensure that the discovery sought be relevant and necessary and that its benefit to the case outweighs the cost and burden of production.

Discovery of electronically stored information from sources that are **not** reasonably accessible should be required, over objection, only if a court orders the discovery based upon a showing of good cause. The decision whether to require the responding party to search for and produce information that is from sources that are not reasonably accessible should depend on whether the burden and expense of producing the

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information can be justified in the circumstances of the case. Appropriate considerations may include: (1) the specificity of the discovery request; (2) the quantity of information available from other and more easily accessed sources; (3) the failure to produce relevant information that seems likely to have existed but is no longer available from more easily accessed sources; (4) the likelihood of finding relevant responsive information that cannot be obtained from other, more easily accessed sources; and (5) the importance and usefulness of the further information in resolving the issues in the case. If the court orders discovery, the court should allocate to the requesting party the expense required to retrieve and produce the information.

Rule 3 – Sanctions
A court should be allowed to impose sanctions for failure to provide electronically stored information lost as a result of the routine operation of an electronic information system only if the producing party intentionally or recklessly violated an agreement or order issued in the action requiring the preservation of specified information. This rule responds to a distinctive feature of electronic information systems—the routine modification, overwriting, and deletion of information that attends normal use. This rule would prohibit a party from exploiting the routine operation of an information system to destroy specific stored information that a party knows it is required to preserve or to act intentionally or recklessly to cause the loss of such electronic information.

Rule 4 – Form of Production
Flexibility is necessary in the production of electronically stored information. Electronically stored information may exist in multiple forms; different forms of production may be appropriate for different types of electronically stored information. The requesting party should be allowed to specify the form or forms of production and the responding party should be allowed to object. If no form is specified, a default rule for production in a reasonably usable form should apply.

Rule 5 - Attorney-Client Privilege and Work Product Protection
Predictable, consistent standards for protection against waiver of the attorney-client privilege and work product immunity in connection with the inadvertent production of privileged or work product information in discovery needs to be established. If information is inadvertently produced that should be protected, a procedure needs to be established for asserting privilege after production that is parallel to similar processes for producing and receiving parties under procedural rules in federal and many state courts. The rule should also clarify when waiver occurs.

Conclusion
The proposed five simple and straightforward rules would make a well-integrated and balanced piece of legislation or rules package that will be a major step towards a more realistic approach to electronic discovery and should significantly reduce the costs and burdens of such discovery and improve its effectiveness. Rules based on the concepts summarized above would contribute to the conduct of fair and reasonable discovery without impinging upon the truth-seeking function of the discovery process. And, they will provide clear and concise guidance to practitioners and litigants in dealing with the many complex and difficult issues involved in discovery of electronically stored information.

Alfred W. Cortese, Jr., Managing Partner, Cortese Pllc, Washington, D.C., specializes in developing and advocating strategic legislative, litigation, and regulatory responses to complex public policy issues with particular emphasis on federal and state court procedural rulemaking processes. He is counsel to Lawyers for Civil Justice, a coalition of defense and corporate counsel, in advocating reform of procedural and evidence rules.

American Legislative Exchange Council

Published by
American Legislative Exchange Council
1101 Vermont Avenue, NW, 11th Floor
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54 Million Reasons

Continued from page 9

or not this is in the best interest of the state, its consumers, and its businesses is much more of a question.

Iowa is currently the only state without a private cause of action under its consumer protection act. In their infancy, state consumer protection acts were modeled after the FTC and did not include private enforcement. However, most states adopted a private enforcement mechanism at a later date. Iowa currently has a bill before it that would add a private right of action under its consumer protection act. ALEC understands that it is important for private citizens to have a means of redressing their grievances from actual violations of consumer protection laws, and has incorporated this need into its model legislation. However, the Iowa legislation adds this private right of action without making necessary changes to a statute that was originally intended to be enforced by the attorney general in his capacity as a representative of the state's consumers. Private lawyers, by their job description, have different incentives governing their practices and cannot be expected to act in the same manner as an attorney whose client is the entire state. Precautions in the statute are essential. Without the changes that would clarify Iowa's broad consumer protection statute, unfounded lawsuits like the $54 million pants suit could develop in Iowa. If indeed Iowa does choose to amend its Consumer Protection Act to include a private right of action, the state legislature would be wise to consider the changes that should complement such a shift from government enforcement to private enforcement.

The Minnesota legislature is currently faced with a bill that would articulate a presumption under the consumer protection act that "any private action alleging a violation of this section is in the public interest and benefits the public." This notion is particularly dangerous when one notes that in *Ly v. Nystrom* in 2000, the Supreme Court of Minnesota ruled that the state's Private Attorney General Statute only allows the awarding of attorneys fees in those cases arising under the consumer fraud act where it could be demonstrated "that their cause of action benefits the public." The passage of such legislation would prove to award attorneys fees under all consumer fraud cases in Minnesota. While the awarding of attorneys fees can be beneficial in some instances, offering a blanket awarding of fees can be especially detrimental to small businesses of the state. As Minnesota has a particularly vague consumer fraud act, the potential for abuse would only increase with the passage of the legislation.

After seeing the dangerous abuse of Consumer Protection Acts first hand, Christopher Manning has articulated the problems that the legislators in Oklahoma, South Carolina, and Kansas aim to fix. "Consumers certainly deserve protection but businesses large and small also deserve protection from frivolous lawsuits brought by unscrupulous consumers."

Law-abiding businesses that provide employment in our job-hungry economy cannot afford to get attacked by meritless consumer protection claims. Nor can state economies and budgets afford to lose meritorious businesses, their tax revenue, and the employment they provide to citizens of the state. As such, ALEC would advise state legislators looking to promote fair business conditions to reform troublesome consumer protection acts.

American laws should not keep entrepreneurs from achieving the American Dream.

Contact ALEC for information about specific state consumer protection laws.

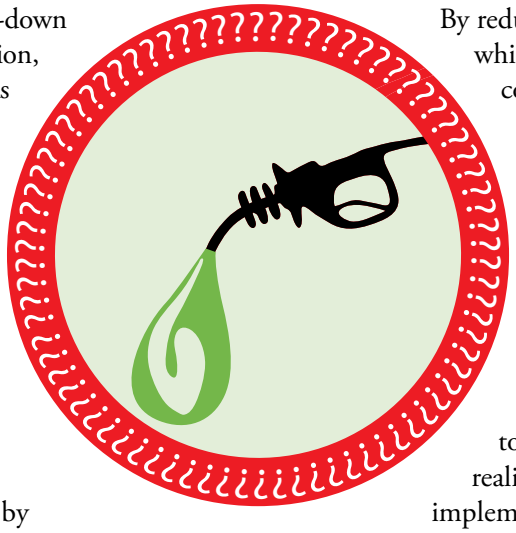
Amy Kjose is the Director of the American Legislative Exchange Council's Civil Justice Task Force.

Published by
American Legislative Exchange Council
1101 Vermont Avenue, NW, 11th Floor
Washington, D.C. 20005

Standardizing Poor Policy:
Low Carbon Fuel Standards

By Andrew Vanderput

California's recent attempt to drive environmental policy for the nation is a plan to implement a low carbon fuel standard (LCFS) in the state by 2010. The LCFS is a government mandate designed to reduce transportation fuels' carbon dioxide emissions and would be the first of its kind in the nation. Unfortunately, an LCFS would be problematic and would have little to no impact on the environment. This top-down approach will result in double regulation, failure to reduce global greenhouse gas levels, and an increase in fuel prices.



A low carbon fuel standard limits the quantity of carbon that can be emitted per unit of energy.[1] California has proposed that the gasoline and diesel used within the state be 10.5 percent and 10 percent less carbon-intensive, respectively. When calculating the intensity of carbon emissions for a particular fuel, the carbon produced by burning the fuel itself is only a part of the equation. The LCFS also counts the emissions produced by "upstream" activities like the extraction, refining, blending, and transporting of the fuels.[2] Inclusion of such data is meant to create a more accurate estimation of a fuel's total carbon emissions, or "lifecycle."

According to the California Governor's Office, the state plan provides producers with a few ways to comply with the LCFS.[3] One option allows fuel producers to purchase and blend ethanol into their gasoline products. But the "lifecycle" emissions of ethanol products may be just as carbon-intensive or worse than conventional sources and have contributed to recent food crises, hurting the poor worldwide by directing crop output away from hungry stomachs and into gas tanks.[4] Another compliance option allows producers to purchase credits from suppliers of low-carbon electrons for electric vehicles. Unfortunately, the costs borne by fuel suppliers in buying these credits will largely be passed on to the consumer through higher gas prices. One study done by CRA International concluded that an LCFS of 8 percent by 2015 would cause fuel prices to increase 140 percent in 2015.[5]

By reducing carbon dioxide emissions, which are blamed by some for their contribution to higher global temperatures, California and like-minded states hope to reduce global warming. Given the fact that transportation related emissions account for 40 percent of California's total greenhouse gas output, the Golden State believes that an LCFS would play a major role in reducing its total carbon-dioxide emissions.[6] In reality an LCFS would be difficult to implement and largely ineffective.

For example, state specific standards could create an unworkable "patchwork" of regulation with differing fuel requirements scattered throughout the country. Some states believe they can mitigate this complication by forming regional initiatives to facilitate policy uniformity among states. The Regional Greenhouse Gas Initiative (RGGI) is one example. This collection of northeastern states recently agreed to develop a uniform LCFS by December 2009.

But regional standards present new problems. The federal government passed the Energy Independence and Security Act of 2007, which already mandates a decrease in fuels' carbon intensity. According to the American Petroleum Institute, a regional standard and federal mandate together would constitute "double regulation, unnecessarily complicate fuel distribution,

and seriously threaten effective response to supply disruptions."[7] Additionally, unless every state or regional initiative adopts the same LCFS a "shuffling" of fuels could occur.[8] Producers would very likely shuffle all of their low-carbon fuels production and sales to states with an LCFS but would continue to supply high-carbon fuels to states without an LCFS, resulting in a zero net reduction in carbon emissions.

Even if a uniform, national LCFS were successfully implemented, global greenhouse gas emission levels would remain largely unchanged. According to the Institute for Energy Research, the reduction in greenhouse gas emissions resulting from a national standard of 10.5 percent, implemented today, would be offset by growth in the world's emissions within a short few months.[9]

Accurately determining the carbon dioxide emissions per unit of energy is another challenge. While an LCFS would attempt to account for the entire greenhouse gas "lifecycle" of a fuel by including emissions from "upstream" activities, additional variables must be considered. The foremost variable in both importance and difficulty is indirect-land-use changes that result from the production of biofuels. If producers clear additional land for the production of agriculturally-intensive biofuels then total greenhouse gas emissions could actually increase. This increase would result from the loss of the land's all-important ability to sequester carbon, therein increasing levels of atmospheric carbon dioxide.[10] Tracking and accounting for various changes in land-use throughout the world resulting from new biofuel production could prove extremely difficult if not impossible. The immense difficulty in accurately calculating the greenhouse gas lifecycle of different fuels undermines the claim that an LCFS would reduce net carbon dioxide emissions.

Lastly, the technology needed to make an LCFS effective is not commercially viable. The effectiveness of California's plan to reduce greenhouse gases through an LCFS is largely dependent on the development of technology which currently delivers at high-costs. Instead of using corn ethanol in fuel mixes, which has been criticized as highly carbon-intensive in its production process, California projects that half of the ethanol will come from low-carbon, lignocellulosic sources.[11] These cellulosic technologies, however, are not yet cost-effective and will not be for years to come. As a result, any LCFS would most likely rely on the increased production of more carbon-intensive, corn ethanol. Given cellulosic technologies' lack of commercial viability in the near future, the effectiveness of California's LCFS in actually reducing carbon dioxide emissions is doubtful.

Although California may hope to lead the nation in its climate change initiatives, other states should not follow its example by pursuing their own LCFS. Though perhaps well intentioned, a low carbon fuel standard is a troubled policy that will create onerous regulation, increase gasoline prices, and fail to reduce global greenhouse gas levels.

Andrew Vanderput is Legislative Assistant to the Natural Resources Task Force and the Civil Justice Task Force at ALEC.

1 Daniel Sperling and Sonia Yeh, "Low Carbon Fuel Standards," Issues In Science And Technology, (Winter 2009): 57-66.

2 David Crane and Brian Prusnek, "The Role of a Low Carbon Fuel Standard in Reducing Greenhouse Gas Emissions and Protecting Our Economy," California Governor's Office, (January 2007): 1. Available from Internet: http://gov.ca.gov/pdf/gov/alternativeFuels.pdf.

3 Crane and Prusnek, "The Role of a Low Carbon Fuel Standard in Reducing Greenhouse Gas Emissions and Protecting Our Economy,"

4 C. Ford Runge and Benjamin Senauer, "How Ethanol Fuels the Food Crisis," Foreign Affairs, 28 May 2008.

5 Daniel Simmons, "Low Carbon Fuel Standards: Recipes for Higher Gasoline Prices and Greater Reliance on Middle Eastern Oil," Institute for Energy Research.

6 Ibid.

7 "API Comments on Midwestern Low Carbon Fuel Standard Initiative Draft Recommendations," American Petroleum Institute, 21 January 2009.

8 Sperling and Yeh, "Low Carbon Fuel Standards," 63.

9 Simmons, "Low Carbon Fuel Standards: Recipes for Higher Gasoline Prices and Greater Reliance on Middle Eastern Oil."

10 Sperling and Yeh, "Low Carbon Fuel Standards," 63-64.

11 Crane and Prusnek, "The Role of a Low Carbon Fuel Standard in Reducing Greenhouse Gas Emissions and Protecting Our Economy,"

Internet Safety:
Important New Report Stresses Multi-Layered Approach

By Seth Cooper

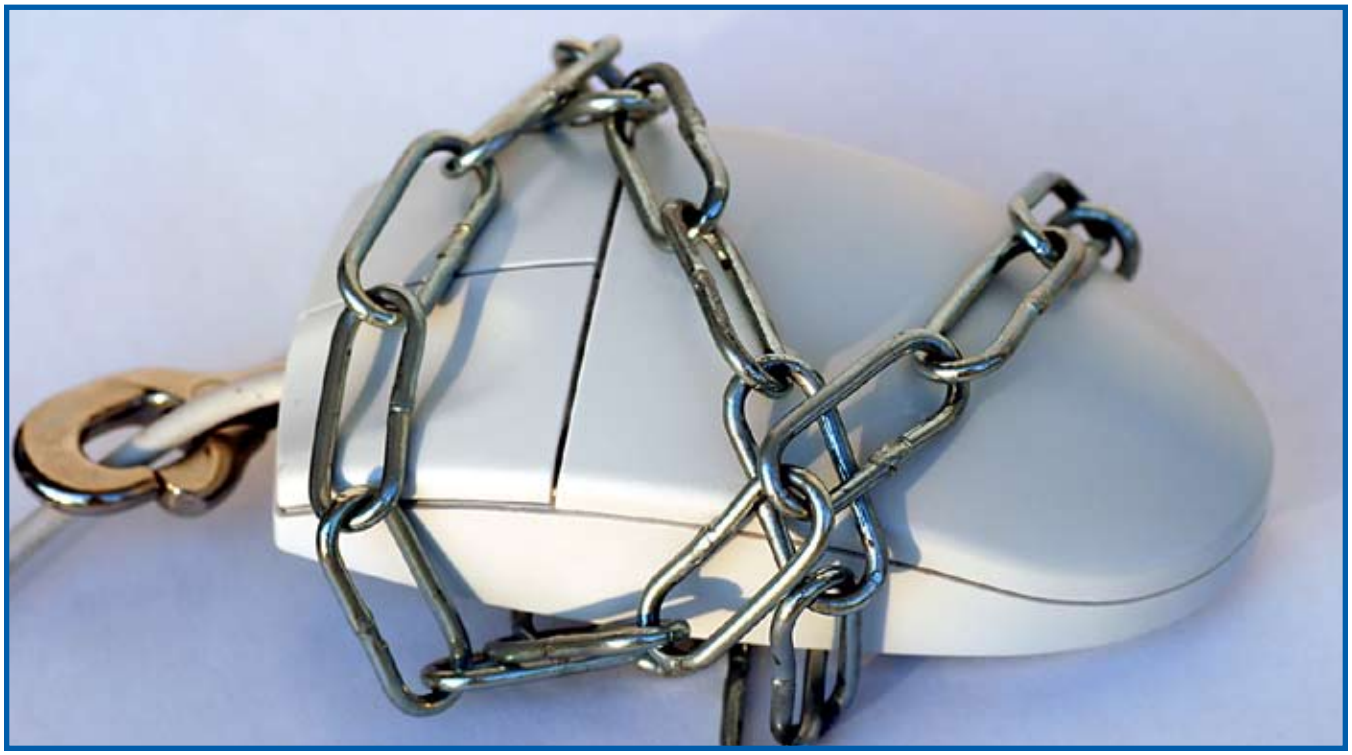
As states grapple with how to ensure safe online experiences for children, policymakers should take notice of a highly anticipated report on Internet safety. January saw the public release of "Enhancing Child Safety & Online Technologies," the Internet Safety Technical Task Force's Final Report to a working group of state Attorneys General. First established out of an agreement between 49 state AGs and NewsCorp's MySpace, the Final Report included a series of findings and recommendations for improving online safety for children.

Multi-Layered Approach to Online Safety

The Final Report summarizes the Internet Safety Technical Task Force's work, analyzes the submissions of eight leading social network sites, and gives a series of recommendations for how to approach the issue of online safety for children in the future. The Final Report is accompanied by a Literature Review of research concerning online child safety and a review of forty technologies for online child safety. It's available online at http://cyber.law.harvard.edu/pubrelease/isttf/.

The Final Report urged "a combination of technologies, in concert with parental oversight, education, social services, law enforcement, and sound policies by social network sites and service providers" to assist in addressing specific problems faced by children online. It advised state AGs "to work collaboratively with all stakeholders in pursuing a multifaceted approach" to improve online safety for children. Part VII of the Final Report contains recommendations for the online community, for the expenditure of resources, and for parents.

"The research shows while technology may be part of the solution, the key to keeping kids safe online is a multilayered approach combining technology, law enforcement, caregiver oversight and private educational



efforts on Internet safety," said Bartlett Cleland, director of the Institute for Policy Innovation. Cleland was a member of the Task Force.

Onerous & Ineffective Technological Mandates

The Internet Safety Technical Task Force was being closely watched by state AGs, the online community, and the general public for how it would approach the controversial issue of technological mandates. In particular, age verification requirements for social networking or other Internet use raise profound freedom of speech issues and could usher in a morass of unprecedented Internet regulation. Age verification rules operating similar to speech licenses could also lead to mass migrations of users to unsafe, foreign-based sites that reject the online safety policy commitments of domestic social networking sites such as MySpace and Facebook.

Ultimately, The Task Force frowned on technological mandates and refused to support age verification requirements. The Final Report asserted that the Task Force "remains optimistic about the development of technologies to enhance protections for minors online and to support institutions and individuals involved in protecting minors, but cautions against overreliance on technology in isolation or on a single technological approach."

Although the Task Force concluded that no set of technological mandates will offer a viable approach to reducing online safety hazards, Adam Thierer of the Progress & Freedom Foundation stressed that the Final Report should have more clearly emphasized the shortcomings of age verification requirements. A member of the Task Force, Thierer concluded that "if the [Task Force] had one failing—and this would really be the only one—it was that we did not go far enough in illustrating why mandatory age verification will not work and how age verification will actually make kids less safe online."

ALEC's Approach to Online Safety & Privacy

ALEC addressed Internet safety last year through its comprehensive *Model Legislation to Pursue and Control Online Child Predators* (2008). The model bill embodies the kind of multi-layered approach recommended in the Final Report.

ALEC's model empowers parents by requiring Internet access providers to make available tools to monitor and control their child's Internet usage. It emphasizes education by requiring the proposal of model curricula in schools by a state's education department. The model bill establishes new mechanisms for online businesses to cooperate with law enforcement. In addition, ALEC's model increases sex offender registration requirements and controls post-incarceration. Finally, the model bill establishes new categories of crimes to better address sex offenders' misuse of modern technologies.

ALEC's model bill for online child safety is also consistent with ALEC's *Statement of Principles for Online Privacy* (2003). ALEC's four basic principles:

1. The private sector should lead;
2. Government should avoid undue restrictions on e-commerce;
3. The marketplace is working; and
4. To the greatest extent possible, individuals should be directing their privacy choices.

In 2009, ALEC will continue to explore a multi-layered approach to ensuring online safety for children.

Seth Cooper is Director of the Telecom & IT Task Force at the American Legislative Exchange Council.

DTV Transition in Transition: Delayed to June 13

In early February, President Obama signed the *DTV Delay Act*. The new law pushes back the February 17, 2009 transition of TV broadcasting from analog to digital to June 13, 2009. Consumers who use antennas and have older TV sets who do not upgrade will find that their TVs no longer work after that date. Many television stations are currently switching their signals voluntarily so service may be disrupted for some already.

Consumers who haven't yet made the switch can still take advantage of the federal converter coupon program. Every household in the U.S. can request up to two coupons worth $40 each toward the purchase of basic converter boxes at local retail stores. Rabbit-ear antennas must still be used along with the converter boxes to receive digital TV signals. There is currently a waiting list for converter coupons, but the *DTV Delay Act* extends the deadline for consumers to request these coupons until mid-July. The recently-signed stimulus bill provides additional funding for the converter coupon program. Consumers can apply for coupons at www.dtv2009.gov or by calling 1-888-DTV 2009.

As a member of the DTV Transition Coalition, the American Legislative Exchange Council is helping to ensure that consumers are prepared for the switch to DTV.

Introducing ALEC's Amicus Project

By Seth Cooper

Over the years, ALEC has filed and joined friend-of-the-court (amicus curiae) briefs in court cases involving Jeffersonian principles and ALEC policies. Recently, however, ALEC took steps to better organize and facilitate its efforts under ALEC's Amicus Project.

ALEC's Amicus Project amicus briefs provide courts with the unique institutional perspective of state legislators. This perspective is particularly insightful to courts considering separation of powers and federalism issues. Candidates for ALEC amicus briefs also include cases where courts face issues involving ALEC model legislation.

ALEC's Amicus Project is extraordinarily efficient and selective with its cases. ALEC coordinates its amicus operations with allied organizations or with top-notch attorneys typically serving on a pro bono basis. This allows ALEC to let its unique voice be heard in important cases without diverting focus or resources from ALEC's primary mission of developing and promoting model state legislation.

In the past year, ALEC's amicus efforts have included significant cases coming before the U.S. Supreme Court:

- *Speaker of the Arizona House of Representatives and President of the Arizona Senate vs. Flores* (2009): ALEC asked the U.S. Supreme Court to vindicate the constitutional authority of state legislators to adopt and fund educational policies that emphasize standards and accountability. ALEC's brief asserted that federal court decrees and injunctions against state and local government institutions should be narrowly drafted, limited in duration, and respectful of policy judgments.

- *Ysursa v. Pocatello Education Association* (2009): ALEC joined an amicus brief with Evergreen Freedom Foundation emphasizing the discretion of states to abstain from assuming automatic payroll deduction duties for public employee union political funds in light of states' overall discretion to create or withdraw public collective bargaining privileges to public employee unions. The brief also reaffirmed the authority of states to control their respective political subdivisions and prohibit automatic payroll deduction of local government employee for public employee union political activities.

- *Bartlett v. Strickland* (2009): ALEC submitted a brief to the U.S. Supreme Court, urging it to vindicate the primacy of state legislatures in making redistricting decisions under Article I, Section IV of the U.S. Constitution. ALEC's brief emphasized that state legislators need clear rules that can be properly understood and applied in setting district boundaries, and that state legislators should be able to make redistricting decisions based upon political subdivisions such as counties as well as other objective, race-neutral means of limiting unconstitutional gerrymandering.

State Supreme Courts also decide significant cases each year with implications for Jeffersonian principles. Recent ALEC amicus briefs filed in state high courts include:

- *Brown v. Owen* (WA): ALEC defended the Washington State Senate's parliamentary rule requiring supermajorities for tax increases. ALEC argued that separation of powers principles prohibit a court from interfering with the legislative branch's ability to interpret and apply its own rules in discretionary matters.

- *Caine v. Horne* (AZ): ALEC joined a coalition of school-choice organizations in urging the Arizona Supreme Court to uphold the constitutionality of Arizona's Scholarships for Pupils with Disabilities Program and the Arizona's Displaced Pupils Grant Choice Program. Its brief emphasized the importance of the scholarship programs in better meeting the educational needs of disabled and foster children while avoiding the red tape involved with existing federal requirements.

- *Milwaukee Journal-Sentinel v. Department of Administration* (WI): ALEC defended Wisconsin's open public records law from amendment by back channels in a brief to the Wisconsin Supreme Court. ALEC's brief maintained that a bill's mere reference to a privately-bargained contract whose terms are not included in the bill does not by itself change existing statutes requiring disclosure of public records.

ALEC's Amicus Project will be submitting amicus briefs in additional cases in 2009, promoting and defending Jeffersonian principles and ALEC policies.

Seth Cooper is Director of the Telecom & IT Task Force at the American Legislative Exchange Council.

Member News

NM State Membership Event
ALEC held a special membership event in Santa Fe, NM on February 17. This was one of several recent ALEC membership events held around the country. A complete list of these events is available online at www.alec.org. For more information please contact Rick Gowdy, Deputy Director of Membership and Development at rgowdy@alec.org or at 202-742-8512.

(Top) ALEC Board member Kelly Mader and Rep. Anna M. Crook.

(Middle) From left, NM Senators Howie Morales, Tim Keller and Kent Cravens.

(Bottom) NM State Chairs – From left, Sen. Kent Cravens, Gaspar Laca of GlaxoSmithKline and Rep. Paul Bandy. (Bottom)

ALEC Members in TN Elected to Leadership Positions
ALEC member Waymon Kent Williams of Elizabethton was elected as the new Speaker of the House or Representatives in Tennessee while ALEC Board Member and Tennessee State Representative Steve McDaniel was named to the post of Deputy Speaker of the House in January. "Since I arrived in the Legislature, Steve McDaniel has provided me with helpful advice and counsel," said Speaker Williams. "As Deputy Speaker, Steve will assist me in making key decisions as we progress toward a truly bipartisan House of Representatives." Rep. McDaniel, who served as ALEC national Chairman in 2001, will also chair the Rules Committee and the Study Committee on Subcommittees.

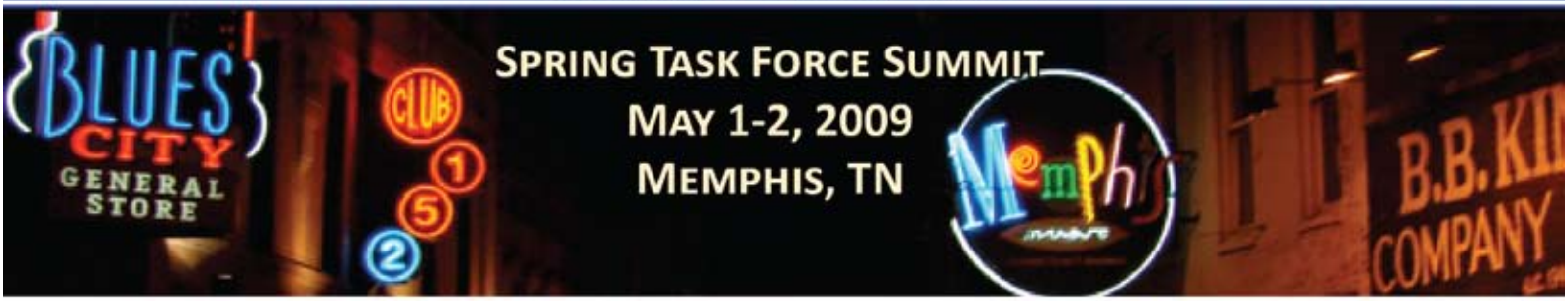
Former S.D. Rep. Phyllis Heineman Appointed to State Board of Education
ALEC Alumni Member and former South Dakota State Representative Phyllis Heineman was appointed to serve on the State Board of Education by Governor Mike Rounds in February. In the legislature, Heineman served as Chairman of the Education Committee for six years analyzing educational technology, state aid, 21st century skills/graduation requirements, teacher compensation, and the No Child Left Behind accountability systems. "Phyllis Heineman will be a great addition to the South Dakota Board of Education," said Secretary of Education Tom Oster. "She is very passionate about education. She understands how our educational system operates, and she is committed to providing the best opportunities for our young people. Her years of service in the state legislature will be valuable as we set educational policy and develop administrative rules."

CA State Chair Sen. Dennis Hollingsworth Elected Senate Minority Leader
Anti-tax Republican senators elected Sen. Dennis Hollingsworth (ALEC's CA State Chairman) as their new leader in the California Senate in February during a contentious budget fight. "I think it's pretty clear, the statement I've made in the last few days, is that I don't want see a tax increase passed," Hollingsworth said. "I think the majority of my caucus doesn't want to see a tax increase passed in this particular package. But we'll see what happens in the next few minutes, the next few hours, the next few days." California legislators did in fact approve a new budget which includes over $14 billion in new taxes, including increases in the state's vehicle license fee and higher gasoline, sales and personal income taxes, making California residents and businesses the most heavily taxed in the U.S.

New!
Report Card on American Education: A State-by-State Analysis

Where does your state rank? What are its average class sizes, per pupil expenditures, average teacher salaries, and drop out rates and how do they compare to your neighbors'? Now in its 15th year, ALEC's latest Report Card on American Education helps answer these questions. Sadly, a majority of students in American public schools are failing to meet proficiency levels in critical subjects despite decades-long increases in public-school funding. The fact remains that spending more money on education isn't always the answer. This report along with ALEC's model legislation will help you find out what is! The full report is available for order and download at www.alec.org.

Upcoming ALEC Meetings



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